



International Organization for Standardization
Organisation internationale de normalisation
Международная организация по стандартизации

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Kevin McKinley
Acting Secretary-General

Your ref
Our ref

Date 2015-11-19

Czech Office for Standards, Metrology and
Testing
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Possible non-compliance with the conditions of ISO membership

Dear

We are writing regarding the judgment of the Metropolitan Court in Prague of 7 September 2015 regarding the free distribution of standards in the construction sector by UNMZ. Our understanding is that this judgment requires all standards referenced in the Czech "Building Act" (law no. 183/2006) to be made available for free within 30 days from the date of the judgment. We further understand that to comply with the judgment, UNMZ provided the applicant with four (4) Czech standards free of charge.

We are concerned that the further implementation of the Building Act and/or of the 7 September 2015 judgment could lead to the non-compliance of UNMZ with the conditions of ISO membership concerning copyright of International Standards if UNMZ is called upon to make any ISO standard freely available.

Indeed ISO's copyright policy (ISO POCOSA) stipulates that ISO and its members must not make ISO Standards available for free (see Clause 3.1 of ISO POCOSA, available at https://dl.dropboxusercontent.com/u/7757520/Other/POCOSA_2012_E.pdf). ISO's Code of Ethics also reinforces ISO members' adherence to these conditions for the reproduction and distribution of ISO standards. While we welcome reference to our standards in regulation or legislation, this cannot alter copyright in ISO standards. ISO POCOSA also requires all ISO members to protect ISO's name and intellectual property in their country. Making ISO standards available for free in the Czech Republic, including through national adoptions of ISO standards, would violate UNMZ's membership obligation to ISO.

Such violation of UNMZ's obligation could ultimately lead to the suspension of UNMZ's membership in ISO, the consequence being that UNMZ would no longer participate in the ISO standards development process, nor be allowed to use ISO standards for national adoption, reproduction or distribution. This could impact on the Czech Republic's ability to comply with provisions of the WTO Technical Barriers to Trade (TBT) Agreement. The TBT Agreement stipulates a Code of Good Practice for standards development, appropriate participation in international standards development, as well as the use of relevant international standards as a basis for technical regulations to create a fair and predictable trading environment.

Furthermore, the WTO TBT Agreement states that "Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice." UNMZ's lack of involvement in ISO, resulting from its violation of its membership obligations, would severely limit its ability to adhere to these provisions.

We are concerned that, as a consequence of the foregoing, the Building Act and 7 September 2015 judgment could severely hamper UNMZ's ability to maintain its participation in ISO in a manner that is stable and representative of relevant national stakeholders.

We understand that since the judgment of 7 September 2015, UNMZ has initiated an amendment to the Building Act to delete the obligation to provide standards free of charge. We note that the amendment proposed by UNMZ has passed the first reading and that it is progressing through the national legislative process. We further note that it is your hope that the amendment will be passed and come into force in or around February 2016.

We are very encouraged by the actions that UNMZ has taken and the progress achieved to date. We sincerely hope that UNMZ's efforts will lead to the successful amendment of the Building Act. We would ask you to please keep us informed of the developments in this matter because the outcome will determine whether any of the measures addressed above need to be initiated.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. McKinley', is positioned above the printed name.

Kevin McKinley
Acting Secretary-General

cc: Elena Santiago Cid, Director General, CEN/CENELEC
Frans Vreeswijk, General Secretary & CEO, IEC